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STATE OF WISCONSIN

BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

WAYNE L. MCFADDEN, M.D.,

RESPONDENT.

FINAL DECISION AND ORDER

99 MED 39

LS9912154MED

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

Dr. Wayne L. McFadden, MD
100 15th Ave.
South Milwaukee, WI 53172

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Wayne L. McFadden (dob 12/31/1928) is and was at all times relevant to the facts set forth herein a physician and surgeon licensed in the State of Wisconsin pursuant to license #14494, first granted on 10/29/1962. Respondent is a general practitioner.
2. In 1998, respondent purchased and had delivered to his office by a drug wholesaler 3,000 hydrocodone 5mg tablets and 1 pint of Promethazine VC Syrup with codeine, both controlled substances. Respondent took these items home.
3. On 2/22/1999, DEA Diversion Investigators met with the respondent and found 1,200 tablets of hydrocodone at the respondent's residence. The respondent admitted to the investigators that he was dispensing the hydrocodone to his wife. His wife took an average of 3 tablets of hydrocodone a day for relief of her chronic chest pain.
4. Respondent did not maintain any receiving records, dispensing records, or inventories of these controlled substances. Respondent dispensed controlled substances to his wife and did not maintain a patient health care record for her.
5. The respondent said that he did not prescribe hydrocodone for his wife, but had only provided it to her. The respondent said that Dr. K prescribed hydrocodone for his wife and that Dr. K was aware that the respondent was providing the hydrocodone to his wife.
6. Dr. K did not see or treat the respondent's wife from 12/4/1997 through 4/22/1999. Dr. K did not write any prescription orders of hydrocodone for the respondent's wife, although his chart reflects that he was told that she was taking hydrocodone for pain. The respondent's wife's primary physician, Dr. R., did not see or treat the respondent's wife from late 1995 through 4/29/1999 and has not written a prescription for hydrocodone for respondent's wife since 12/5/1995.

7. On 12/31/1998, the respondent retired from practice.
8. On 3/23/1999, the respondent surrendered 1,000 tablets of hydrocodone to Aurora Pharmacy in accordance with DEA regulations requiring transfer of any controlled substances upon retirement from practice.
9. Accompanying the stipulation to this Final Decision and Order was the surrender of respondent's DEA registration.

CONCLUSIONS OF LAW

- A. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to §448.02(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.
- B. The conduct described in paragraphs 2, 3, 4, 5, and 6, above, violated §961.38(4g), Wis. Stats., in that the providing of controlled substances to respondent's wife was not in the ordinary course of practice, and § Med 10.02(2)(p) and (z), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.
- C. The Board specifically finds that it is outside the current standard of care for a prescriber to prescribe controlled substances on an ongoing or regular basis for a member of the practitioner's immediate family, although it may be appropriate to so prescribe under urgent or emergency circumstances. Therefore, the prescribing for respondent's wife as described above violated § Med 10.02(2)(h), Wis. Adm. Code, and such conduct constitutes unprofessional conduct within the meaning of the Code and Statutes.
- D. The failure to make and keep inventories, records of receipt, and records of dispensing/distribution/sale/destruction of controlled substances violated 21 USC §842(a)(5) and 21 CFR §1304.11(c) and 21 CFR §1304.22(c) and § Phar 8.05(3), Wis. Adm. Code. Such conduct is unprofessional conduct pursuant to § Med 10.02(2)(p) and (z), Wis. Adm. Code.
- E. The conduct described in paragraph 4, above, violated § Med 17.05(1) and (2), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Wayne L. McFadden, MD, is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent's license is LIMITED in the following respect: shall not apply for or hold a DEA registration, and shall not order, prescribe, dispense, or attempt to order, prescribe or dispense, any controlled substance.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter in the amount of \$800, within 45 days of this order.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

Dated this December 15, 1999.

WISCONSIN MEDICAL EXAMINING BOARD, by:

by: Ronald Grossman, M.D.

a member of the Board